

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs March 18, 2009

**TIMMY L. DULWORTH v. RICKY BELL, WARDEN**

**Direct Appeal from the Criminal Court for Davidson County  
No. 4006 Monte Watkins, Judge**

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**No. M2008-02272-CCA-R3-HC - Filed April 28, 2009**

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In 1987, a Macon County jury convicted the Petitioner, Timmy L. Dulworth, of assault with intent to commit first degree murder and of armed robbery, and he was sentenced to life imprisonment. The Petitioner's convictions were set aside, and he subsequently pled guilty to the same crimes and received an effective thirty-seven year sentence. In 2008, the Petitioner filed a *pro se* petition for habeas corpus relief, which the habeas court summarily dismissed. On appeal, the Petitioner claims the habeas court erred because: (1) the trial court lacked jurisdiction to amend his June 6, 1994, judgments; (2) the amended judgments omitted his pretrial jail credits; and (3) the trial court imposed illegal sentences because the sentences were longer than the statutory minimums but no evidence of enhancement factors was introduced. After a thorough review of the record and relevant authorities, we affirm the judgment of the habeas court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Timmy L. Dulworth, Pro se, Nashville, Tennessee.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; David H. Findley, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Roger Moore, Assistant District Attorney General, for the Appellee, Ricky Bell.

**OPINION**

**I. Background**

On June 30, 1987, a Macon County jury found the Petitioner guilty of assault with intent to commit first degree murder and of armed robbery, and he was sentenced to life imprisonment. The Petitioner was granted post-conviction relief, and his convictions were set aside. On June 6, 1994, pursuant to a plea agreement, the Petitioner pled guilty to one count of assault with intent to commit

murder and one count of armed robbery. Pursuant to the plea agreement, the trial court sentenced him to twenty-five years for the assault and twelve years for the armed robbery, and it ordered that he serve the sentences consecutively, for an effective sentence of thirty-seven years. The judgments also included that the Petitioner receive pretrial jail credit days pursuant to prior court orders. On October 6, 1994, the trial court filed amended judgments, which did not specify any pretrial jail credit.<sup>1</sup> The Petitioner filed a petition for habeas corpus relief, and the habeas court denied him relief. It is from this judgment that the Petitioner now appeals.

## II. Analysis

On appeal, the Petitioner claims the habeas court erred because: (1) the trial court lacked jurisdiction to amend his June 6, 1994, judgments; (2) the amended judgments omitted his pretrial jail credits; and (3) the trial court imposed illegal sentences because the sentences were longer than the statutory minimums and no evidence of enhancement factors was introduced. We will address his first two claims together followed by his third claim.

Whether habeas corpus relief should be granted is a question of law. *Edwards v. State*, 269 S.W.3d 915, 919 (Tenn. Sept. 18, 2008). Thus, we apply *de novo* review and afford no presumption of correctness to the findings and conclusions of the court below. *Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Hogan v. Mills*, 168 S.W.3d 753, 755 (Tenn. 2005).

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. See *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Tennessee statute, however, governs the exercise of this constitutional guarantee. See T.C.A. § 29-21-101 (2006). Although the statute does not limit the number of requests for habeas corpus relief a petitioner may make, it does narrowly limit the grounds upon which a court may grant habeas corpus relief. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner must demonstrate by a preponderance of the evidence that “the sentence is void or that confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). In other words, a petitioner must base his request for habeas corpus relief upon the following very narrow grounds: (1) a claim that, because the convicting court was without jurisdiction or authority to sentence the petitioner, the convicting court’s judgment is facially invalid and, thus, void; or (2) a claim that the petitioner’s sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). Also, “[a]n illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhard*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment is “one that is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its validity.” *Taylor*, 995 S.W. 2d at 83; see *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000).

A habeas court is not required, as a matter of law, to grant the writ or conduct an inquiry into

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<sup>1</sup> It appears that the purpose of entering the amended judgments was to clarify that the sentences resulting from the 1987 jury verdicts were set aside.

the allegations contained in the petition. *See* T.C.A. § 29-21-109 (2006). If the petition fails on its face to state a cognizable claim, it may be summarily dismissed by the trial court. *See State ex. rel. Byrd v. Bomar*, 381 S.W.2d 280, 283 (1964); T.C.A. § 29-21-109. “If from the showing of the petitioner, the plaintiff would not be entitled to any relief, the writ may be refused.” T.C.A. § 29-21-109.

### **A. Trial Court’s Jurisdiction to Amend Judgment**

The Petitioner alleges that the habeas court erred when it denied him relief because the amended judgments are void for the trial court’s lack of jurisdiction to amend the June 6, 1994, judgments. He further argues that the amended judgments omit his pretrial jail credits towards his sentences and that such an omission violates his constitutional rights. The State counters that the changes reflected in the amended judgments were merely a correction of clerical mistakes and that the trial court may correct clerical mistakes at any time. It also argues that the Petitioner must seek redress of his pretrial jail credits claim through administrative avenues.

A judgment of conviction entered upon a guilty plea becomes final thirty days after it is entered. *State v. Green*, 106 S.W.3d 646, 650 (Tenn. 2003). After the judgment becomes final, the trial court loses jurisdiction of the case. Tenn. R. App. P. 4. However, a trial court “may at any time correct clerical mistakes in judgments . . . and errors in the record arising from oversight or omission.” Tenn. R. Crim. P. 36.

We initially note that the amended judgments were entered more than thirty days after the June 6, 1994, judgments. Thus, the judgments were final, and the trial court lost jurisdiction to alter the judgments except to correct clerical mistakes. *See Green*, 106 S.W.3d at 650; *see also* Tenn. R. Crim. P. 36. It appears to this Court that the trial court filed the amended judgments to clarify that the Petitioner’s previous convictions and sentences from his 1987 judgments were set aside and replaced by the amended judgments. In our view, the trial court’s clarifications were clerical in nature. As such, the trial court had jurisdiction to amend the judgments in this manner.

As for the Petitioner’s pretrial jail credit claim, we note that while the June 6, 1994, judgment stated “check prior orders” on the blank for the number of days of pretrial jail credit the Petitioner would receive, the amended judgments stated nothing about jail credit for pretrial days spent in jail. Issues pertaining to pretrial jail credits are generally inappropriate for consideration in a petition for the writ of habeas corpus. The Petitioner is not entitled to relief on this issue.

### **B. Sentence Length**

The Petitioner claims that the habeas court erred when it denied him relief for his claim that the trial court imposed sentences longer than the statutory minimum length even though no enhancing evidence was presented. The State argues that this is not a ground on which habeas relief may be granted.

The sentences the Petitioner received were within the statutory ranges for the crimes to which he pled guilty. As for the Petitioner's argument that no enhancing factor evidence was presented, such a claim requires this Court to look beyond the face of the judgments. Any error would possibly render the judgments voidable, as opposed to void. Therefore, the Petitioner's claim is outside the scope of habeas corpus relief. *See Taylor*, 955 S.W. 2d at 83. The Petitioner is not entitled to relief on this issue.

### **III. Conclusion**

After a thorough review of the record and relevant authorities, we conclude that the habeas court properly dismissed the Petitioner's petition for habeas corpus relief. Accordingly, we affirm the judgment of the habeas court.

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ROBERT W. WEDEMEYER, JUDGE